

**OLD BRIDGE MUNICIPAL UTILITIES AUTHORITY**  
**REGULAR MEETING**  
**August 18, 2010**

Call to Order: The Regular Meeting of August 18, 2010 was called to order at 7:04 p.m. with the Pledge of Allegiance by Chairman Smolney.

Announcement by Chairman: Chairman Smolney announced that this meeting is being held in conformance with the Open Public Meetings Act. Notice has been given to the newspapers and notice of the meeting has been posted in public places.

Roll Call: Present:  
Nicholas Smolney, Chairman  
Edward Testino, Vice-Chairman  
Kiran Desai, Treasurer  
Rocco Donatelli, Commissioner  
Reginald Butler, 1<sup>st</sup> Alternate – Assistant Secretary  
Richard Greene, 2<sup>nd</sup> Alternate – Assistant Treasurer

Absent:  
Thomas Galante, Secretary

Also present:  
Guy Donatelli, Executive Director  
Michael Roy, P.E.  
Stephen A. Florek II, Comptroller  
Louis E. Granata, Esq.

Executive Director's Report: Guy Donatelli, Executive Director

Mr. Donatelli stated that daily drinking water pumping averages for June and July were at an all time high.

The Arbors Sewer Pump Station Upgrade designed by the Alaimo Group is out to bid. The bids will be opened later this month; Alaimo will be managing the construction of the project.

Raymond Totten, Water Division, has attained a W-3 license, and Robert Thompson, Sewer Division, has attained a C-2 license.

Congressman Frank Pallone is requesting \$1 million for the construction of a sanitary sewer to service the Crossroads Project.

A motion to accept the Executive Director's Report was made by Mr. Smolney and seconded by Mr. Desai.

The motion was approved by an ALL AYES vote.

Chairman's Report: Nicholas R. Smolney  
Waived

Previous Minutes: Regular Meeting - May 4, 2010  
Executive Session - May 4, 2010  
Regular Meeting - June 16, 2010  
Executive Session - June 16, 2010

A motion to approve the above previous minutes was made by Mr. Donatelli and seconded by Mr. Butler.

The roll call was as follows:

AYES: Desai, Donatelli, Testino, Butler, Smolney.

NAYS: None.

ABSENT: Galante.

5 Ayes          0 Nays          1 Absent

Engineering Reports: Michael Roy, P.E.

**Colony Development**  
**Colony Business Parks at Old Bridge, LLC**  
**1 W-10619, Minor Water – 1 EDCU**

Mr. Roy stated that this is an application for fire protection only at 2 Jocama Boulevard for a sprinkler system. This is a Minor Water Application, and since all conditions for a Minor Water Approval have been satisfied, approval is recommended.

A motion to approve as recommended the Minor Water Application for Colony Development/Colony Business Parks at Old Bridge, LLC W-10619, was made by Mr. Desai and seconded by Mr. Butler.

The roll call was as follows:

AYES: Desai, Donatelli, Testino, Butler, Smolney.

NAYS: None.

ABSENT: Galante.

5 Ayes            0 Nays            1 Absent

**Butler Major Subdivision**  
**Ronald and Kim Butler/34 Units**  
**2. W10-618, Preliminary Water**  
**3. S10-484, Preliminary Sewer**

Mr. Roy stated that this is an application for Preliminary Water and Sewer for the construction of approximately 2,250 LF of 8 inch DIP water main and 1,400 LF of 8 inch PVC sewer main to service the property. The applicant must agree to contribute its fair share of the costs associated with the regional water and sewer improvements previously installed under the Woodhaven Agreement and Settlement. Township Preliminary and Final Zoning Board Approval was granted. There is no need for either a water or sewer capacity study. Prior to Tentative Review the Applicant must provide a full set of plans and proof of approvals from the Township when available. Preliminary Water and Sewer is recommended.

A motion to approve as recommended Butler Major Subdivision/Ronald and Kim Butler W10-618, Preliminary Water and S10-484, Preliminary Sewer was made by Mr. Desai and seconded by Mr. Butler.

The roll call was as follows:

AYES: Desai, Donatelli, Testino, Butler, Smolney.

NAYS: None.

ABSENT: Galante.

5 Ayes            0 Nays            1 Absent

**Water's Edge at Laurence Harbor**  
**Dennis Kessler, Todd Kessler, Edwin Larsen /9 Units**  
**4. W10-616, Preliminary Water**  
**5. S10-483, Preliminary Sewer**

Mr. Roy stated that this property is located on Rt. 35 between McKinley and Roosevelt Avenues. This application is for the construction of approximately 200 LF of 8 inch DIP water main to connect into an existing water main in Roosevelt Avenue to service three proposed single family units, plus six proposed one inch wet taps on the existing water main in McKinley Avenue to service the balance of six single family units. Preliminary Approval was granted by the Township on June 18; Final Approval is pending. Comments on the Tentative Review include, among other items, resubmission of the plans. Preliminary Water and Sewer Approval is recommended.

A motion to approve as recommended Water's Edge at Laurence Harbor/Dennis Kessler, Todd Kessler, and Edwin Larsen III, W10-616, Preliminary Water and S10-483, Preliminary Sewer was made by Mr. Butler and seconded by Mr. Smolney.

The roll call was as follows:

AYES: Desai, Donatelli, Testino, Butler, Smolney.

NAYS: None.

ABSENT: Galante.

5 Ayes            0 Nays            1 Absent

**Route 18 Marketplace**  
**Route 18 Marketplace, LLC/3 EDCU's**  
**6. W10-612, Preliminary & Tentative Water**  
**7. S10-480, Preliminary & Tentative Sewer**

Mr. Roy stated that this application includes the construction of approximately 830 LF of 8 and 10 inch DIP water main to connect into an existing water main in Maple Street to service a 10,800 SF retail center has been reviewed for Preliminary and Tentative Approval. Final Approval from the Township was received on January 7, 2010. The size of the development does not require a capacity water or sewer study. Among the comments on the Engineer's Report, is a requirement to revise the plans for their

future Final Application. Preliminary and Tentative Water and Sewer Approval is recommended.

A motion to approve as recommended Route 18 Marketplace/Route 18 Marketplace, LLC, W10-612, Preliminary & Tentative Water and S10-480, Preliminary & Tentative Sewer was made by Mr. Desai and seconded by Mr. Butler.

AYES: Desai, Donatelli, Testino, Butler, Smolney.

NAYS: None.

ABSENT: Galante.

5 Ayes            0 Nays            1 Absent

Superintendent's Report:

Al Lunkenheimer, Superintendent Sewer Division

Report to be given at the next meeting

Engineering Reports: Michael Roy, P.E.

**1. Lead Contamination Grant Application**

Mr. Roy stated that Bruno Associates has recommended that the Authority apply for a grant from the Hazardous Discharge Site Remediation Fund (HDSRF) with the DEP for reimbursement of the clean up costs for the lead contamination discovered during the installation of the Laurence Harbor Interceptor. A resolution is required as part of the Application.

A motion to authorize the Authority as recommended to apply to the HDSRF for a grant that would reimburse the Authority for the clean up costs associated with the lead contamination discovered during the Laurence Harbor Interceptor construction was made by Mr. Testino and seconded by Mr. Butler.

The roll call was as follows:

AYES: Desai, Donatelli, Testino, Butler, Smolney.

NAYS: None.

ABSENT: Galante.

5 Ayes            0 Nays            1 Absent

**2. Summerfield Area Gravity Sewer Report.**

Mr. Roy stated that this sewer is located behind Lantana Way. Copies of drawings prepared by R3M have been sent to the Commissioners including a description of R3M's findings. The homeowners are satisfied with the progression of the project. The soil engineering study revealed the need for an extensive retaining wall structure to stabilize the slope. R3M has investigated the possibility of abandoning the sewer and building a sewer pump station instead of the extensive retaining wall structure.

Mr. Roy, referring to plans submitted to the Commissioners, indicated that the green area is the back area along 75 Lantana Way on which emergency repairs were made because the backyard was sliding. The area reestablished the stability of the slope and restoration work was also performed. The area is already vegetated.

With respect to the purple section, there isn't enough room to add, nor is the underlying soil strong enough to support the weight of the fill material. A retaining wall would have to be constructed in this area.

The slope is stable in the white area. Top soil and seed will be added to cover the gravel roadbed. The blue area is the area near Rowan Way in which there is enough room, and has sufficient underlying strength of soil to be filled-in to reestablish the stability of the slope.

Since the entire area is within a wetlands area and is unstable, the staff and R3M Engineering will be attempting to have a meeting with the DEP to determine their willingness to fund this project on an expedited process through the NJEIT low interest loan program. Because of the slope instability, this is a top priority project.

Mr. Samuel stated that the evaluation has been completed, and there are two alternatives. One is to keep the sewer in place to protect the road at a cost of approximately \$4 million. The other is to abandon the sewer and construct a small sewer pump station at the intersection of Furman and Summerfield behind the post office.

This would allow the pipe to be completely abandoned because there are no service connections on the pipe within the easement.

This would eliminate maintenance of the pipe and allow slope stabilization. That area would be returned to a natural condition.

Mr. Roy stated that keeping the road would require building a retaining wall structure with tie backs versus a slope stabilization filling-in to the edge of the Wetlands within the Wetlands Transition Area.

Mr. Samuel stated that the areas disturbed were allowed within the DEP regulations. The intention is to work up to the edge of the road. Going any further would encroach into the Wetlands and into unstable soils. The cost of building the sewer pump station and abandoning the sewer is estimated at \$1.5 million.

Mr. Roy stated that he will report to the Commissioners in September with respect to financing and other alternatives being considered to move this project forward. Time is an important factor.

Mr. Smolney expressed his concern about hurricanes and the accompanying torrential rains.

Mr. Roy expressed his optimism in completing this project by the Spring or Summer of 2011.

Mr. Samuel stated that the geotechnical evaluations indicate that some of the remaining areas are of marginal condition at best. The areas of critical concern have already been stabilized. However, it is impossible to predict the stability of the remaining areas.

In response to a question posed by Mr. Desai, Mr. Roy stated that the cost is about \$4 million to restore the sewer within the easement and create retaining walls versus \$1.5 million to abandon the site and build a sewer pump station.

### **3. Recharge Basin Study – Phases III through VI.**

Mr. Roy reminded the Commissioners that Phases I and II have been previously authorized. Although CME has been working on this project under Phase I and II, they are not ready to issue a “go/no go report”, but may be able to prior to the next board meeting. Authorizing Phases III through VI subject to CME issuing the “go report” will allow CME to continue without delay.

A motion to authorize as recommended CME Associates to proceed with the Engineering Services for the Recharge Basin

Study – Phases III through VI subject to the approval of the Executive Director was made by Mr. Testino and seconded by Mr. Donatelli.

The roll call was as follows:

AYES: Desai, Donatelli, Testino, Butler, Smolney.

NAYS: None.

ABSENT: Galante.

5 Ayes            0 Nays            1 Absent

Financial Report: Stephen A. Florek, II, Comptroller

Mr. Florek requested a resolution for the issuance of the 2010 NJEIT Bonds and the supplemental indentures.

A motion to approve as recommended the issuance of the 2010 NJEIT Bonds and the supplemental indentures was made by Mr. Smolney and seconded by Mr. Testino.

The roll call was as follows:

AYES: Desai, Donatelli, Testino, Butler, Smolney.

NAYS: None.

ABSENT: Galante.

5 Ayes            0 Nays            1 Absent

Mr. Florek presented the commissioners with the final unaudited results of the FYE ended May 31, 2010 Budget. The net income was \$4,005,963. The net income of the Water Division was \$1,421,843; the Sewer Division was \$2,584,120. If the Authority had not used retained earnings of \$5,075,943 to balance the budget, there would have been a shortfall of \$1,069,980 in revenue. Within that amount, the Township was also paid \$1,312,157.

A motion to accept the Financial Report was made by Mr. Smolney and seconded by Mr. Butler.



The motion was approved by an ALL AYES vote.

Bills & Claims: \$2,515,476.97

A motion to approve Bills & Claims was made by Mr. Desai and seconded by Mr. Testino.

The roll call was as follows:

AYES: Desai, Donatelli, Testino, Butler, Smolney.

NAYS: None.

ABSENT: Galante.

5 Ayes            0 Nays            1 Absent

Legal Report: Louis Granata, Esq.

***Executive Director's Contract.***

Mr. Granata distributed revisions to the Executive Director's contract. Referring to page 11, he pointed out the deleted and inserted items. This contract states that the Executive Director will be entitled to a vehicle purchased by the Authority and assigned to him for business and incidental personal use. (The former Executive Director chose his own SUV.) The Executive Director is responsible for assigning all other vehicles within the Authority.

Referring to "Use of Benefit Time", Mr. Granata stated that what was deleted was the former Executive Director's use of vacation, personal, sick and comp time being used at his sole discretion. That has been changed to "according to Authority policy".

Page 5 of the contract names Mr. Donatelli as the purchasing agent authorized to make purchases not to exceed the amount authorized by State Statute.

A motion to authorize a resolution as recommended stating that the Commissioners have reviewed the Executive Director's contract, the terms of which Mr. Donatelli has accepted, and that the Chairman and Secretary are authorized to sign the contract as revised was made by Mr. Testino and seconded by Mr. Butler.

The roll call was as follows:

AYES: Testino, Butler, Greene.

NAYS: None.

NO PARTICIPATION: Desai.

ABSTAIN: Smolney.

ABSENT PODIUM: Donatelli.

ABSENT: Galante.

3 Ayes 0 Nays 1 No Participation 1 Abstain  
1 Absent Podium 1 Absent

Prior to the roll call vote the following discussion took place.

Mr. Testino stated that there was a healthy exchange of view points and thanked Mr. Smolney for his written comments. He added that he was confident that the Executive Director was satisfied with this contract and that the Executive Director deserves the security of knowing that he will be able to perform his duties with confidence.

***Deep Run Townhouse Condominium Association***

Mr. Granata reminded the commissioners that there was a break in the water line several years ago for which the Authority made emergency repairs and billed deep Run \$13,000, an amount which was never paid.

Subsequently, there was another water main break, and the Authority directed Deep Run to make the repairs, and they refused. After the Fire Marshal and the Building Department became involved, the repair was completed by the Association and a Notice of Tort Claim was filed against the Authority.

Records and searches indicate that the Deep Run Townhouse Condominium Association continues to own the water mains. They were never dedicated to the Authority. Deep Run has asked us to take over the mains. They were sent a detailed list of items to be completed prior to the Authority's taking over the water mains. An offer of \$35,000 was made by the Deep Run Association. The amount calculated to insure that the water system complied with regulations with respect to private water systems was \$135,000.

They again refused, and have sued the Authority. An Answer and Counter Claim was filed against Deep Run for the amount of money owed to the Authority.

A motion to authorize a resolution allowing Mr. Granata to represent the Authority in defense and prosecution of a Counter Claim against the Deep Run Townhouse Condominium Association was made by Mr. Desai and seconded by Mr. Smolney.

The following was the roll call vote:

AYES: Desai, Testino, Butler, Greene, Smolney.

NAYS: None.

ABSENT: Galante.

ABSENT PODIUM: Donatelli.

5 Ayes            0 Nays            1 Absent            1 Absent Podium

Prior to the roll call vote the following discussion took place.

Mr. Greene inquired about the recoupment of legal fees.

Mr. Granata explained that the Counter Claim is to recover costs. The court does not award counsel fees for litigation unless there are certain statutory requirements for payment of legal fees or if there is a frivolous lawsuit. Although he has made a claim of frivolous lawsuit, in order to recover any fees, the court has to make a determination based on the case presented that the matter is frivolous. The court generally finds that the litigants should not have to pay for counsel fees and rarely designates a matter frivolous unless it is obviously so.

Mr. Granata also added in the claim that Mr. Rosenblum, the Developer, has not been named.

***K. Hovnanian in Old Bridge, LLC vs the Old Bridge Municipal Authority.***

Mr. Granata stated that K. Hovnanian has asked for a release of its Performance bonds. One of the conditions for the release of the sewer bond was the cleaning of the sewer lines which Hovnanian

believes is an arbitrary, capricious and unreasonable act by the Authority and for which they filed a lawsuit.

Mr. Roy stated that although he is not sure of the exact date, Hovnanian did clean the sewer lines once because they turned the sewer pump station over to the Authority. He believes that this lawsuit may disappear if the cleaning took place within three (3) years.

Mr. Granata requested authorization to accept service and to file an answer on behalf of the Authority.

A motion to authorize Mr. Granata to accept service with respect to the Hovnanian lawsuit regarding the release of the sewer performance bond was made by Mr. Smolney and seconded by Mr. Butler.

The roll call was as follows:

AYES: Desai, Testino, Butler, Greene, Smolney.

NAYS: None.

ABSENT: Galante.

ABSENT PODIUM: Donatelli.

5 Ayes            0 Nays            1 Absent            1 Absent Podium

Mr. Granata stated that he was requesting an Executive Session to discuss pending litigation.

A motion to accept the legal report was made by Mr. Smolney and seconded by Mr. Butler.

The motion was approved by an ALL AYES vote.

Old Business:

**Crossroads Regional Interceptor - Status**

Mr. Roy stated that there needs to be more discussion on the Crossroads project and a decision soon as to whether the Authority should go forward with this project. The NJEIT will not fund the Crossroads Interceptor project this year.

**Brunetti Oaks at Glenwood Development – Status**

To be discussed in Executive Session.

**Groundwater Diversion Rights – Status**

Mr. Roy reported that a meeting had taken place with Malcolm Pirnie. He awaits an update.

**ASR Feasibility Study – Status**

Mr. Roy stated that in a meeting with CH2M Hill, they were requested to provide backup for the figures that they determined to be a savings.

New Business: None.

Open to Public: Seeing no hands Mr. Smolney closed the public portion.

Executive Session: A motion to go into Executive Session at 7:50 p.m. was made by Mr. Smolney and seconded by Mr. Desai.

The motion was approved by an ALL AYES vote.

**Regular Meeting Reconvened at 8:09 p.m.**

**During Executive Session Mr. Granata discussed with the Commissioners the Brunetti Litigation and the Executive Director’s Contract.**

***Promotion to Deputy Superintendent Sewer Division and Foreman Sewer Division***

A motion to promote George Hoff to Deputy Superintendent, Sewer Division and Charles Winkler to Foreman, Sewer Division was made by Mr. Desai and seconded by Mr. Butler.

The roll call was as follows:

AYES: Desai, Testino, Butler, Greene, Smolney.

NAYS: None.

ABSENT: Galante.

ABSENT PODIUM: Donatelli.

5 Ayes            0 Nays            1 Absent            1 Absent Podium

***“Green” Vehicles***

Mr. Testino stated that Mr. Donatelli was exploring the possibility of adding “green” vehicles to the current fleet.

Adjournment: A motion to adjourn at 8:11 p.m. was made by Mr. Butler and seconded by Mr. Desai.

The motion was approved by an ALL AYES vote.

Respectfully Submitted:

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Thomas Galante, Secretary